

David L. Stout, Jr., Bar #024857
Damian M. Zimmer, Bar #036162
JONES, SKELTON & HOCHULI P.L.C.
40 N. Central Avenue, Suite 2700
Phoenix, Arizona 85004
Telephone: (602) 263-7384
Fax: (602) 200-7809
dstout@jshfirm.com
dzimmer@jshfirm.com

Attorneys for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Tammy Bothwell, individually,

Plaintiff,

v.

Circle K Stores, Inc.; John Does and/or
Jane Does 1-X, individually and/or as
husband and wife; Black Corporations
and/or White Limited Partnerships 1-X,

Defendants.

No. TBD

NOTICE OF REMOVAL

Circle K Stores, Inc. (“Removing Defendant”), hereby files the following Notice of Removal of this action, currently pending in the Superior Court of the State of Arizona, County of Pinal, Case No. S1100CV202201328, to the United States District Court for the District of Arizona, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. As grounds for removal, Removing Defendant states as follows:

PROCEDURAL HISTORY

1. The above-captioned case commenced when Plaintiff, Tammy Bothwell, filed a Complaint in Superior Court in and for Pinal County, on July 20, 2022 (the “Complaint”). See Complaint, along with complete copy of Superior Court file, attached as Exhibit A.

2. Removing Defendant was served with the Complaint on August 2, 2022.

1 3. A responsive pleading on Removing Defendant's behalf was filed on
2 August 22, 2022.

3 **TIMELINESS OF REMOVAL**

4 4. Under 28 U.S.C. § 1446(b)(1), a notice of removal shall be filed
5 within thirty (30) days after the receipt by the defendants, through service or otherwise, of
6 a copy of the initial pleading setting forth the claim for relief upon which such action or
7 proceeding is based.

8 5. This Notice of Removal is filed within thirty (30) days after the
9 Complaint was served on Removing Defendant and, therefore, is timely. See 28 U.S.C. §
10 1446(b)(1).

11 6. A Notice of Filing Notice of Removal is being filed with the Superior
12 Court in and for Maricopa County. See Notice of Filing Notice of Removal (exclusive of
13 exhibits), attached as Exhibit B.

14 **BASIS OF REMOVAL**

15 7. This Court has original jurisdiction over this action pursuant to 28
16 U.S.C. § 1332 because the amount in controversy exceeds \$75,000.00 and there is complete
17 diversity of citizenship. See 28 U.S.C. § 1332(a).

18 8. Plaintiff claims personal injuries as a result of Defendant's alleged
19 liability. While Plaintiff has not yet claimed or asserted a specific amount of medical
20 specials, counsel for Plaintiff confirmed that the amount they are seeking is in excess of
21 \$75,000. Accordingly, the amount in controversy exceeds \$75,000. See, email from Byron
22 Browne to Damian Zimmer attached as Exhibit C.

23 9. Such a concession is tantamount to a plaintiff expressly alleging
24 damages in excess of the jurisdictional amount, which we accept as the amount in
25 controversy if done in good faith. *See, Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413,
26 416 (9th Cir. 2018).

1 10. According to the Complaint, Plaintiff resides in Pinal County,
2 Arizona, where she presumably intends to remain. She is thus considered a citizen of
3 Arizona.

4 11. Removing Defendant is incorporated in El Paso, Texas, and has a
5 principal place of business in Austin, Texas. It is thus considered a citizen of Texas.

6 12. Pursuant to 28 U.S.C. § 1446(b)(2)(A), all defendants “who have been
7 properly joined and served must join in or consent to the removal of the action” for all
8 actions removed based on diversity of citizenship.

9 **WHEREFORE**, Removing Defendant, Circle K Stores, Inc. requests that
10 the above action now pending in the Superior Court in and for Pinal County be removed to
11 this Court.

12 DATED this 1st day of September, 2022.

13 JONES, SKELTON & HOCHULI, P.L.C.

14
15 By s/Damian M. Zimmer

16 David L. Stout, Jr.
17 Damian M. Zimmer
18 40 N. Central Avenue, Suite 2700
19 Phoenix, Arizona 85004
20 Attorneys for Defendant

21 **CERTIFICATE OF SERVICE**

22 I hereby certify that on this 1st day of September, 2022, I caused the
23 foregoing document to be filed electronically with the Clerk of Court through the CM/ECF
24 System for filing; and served on counsel of record via the Court’s CM/ECF system.

25 Byron F. Browne, Esq.
26 BROWNE LAW GROUP
27 366 N. Gilbert Road, Suite 201
28 Gilbert, Arizona 85234
 Attorney for Plaintiff

s/Kadie G. Lewis